

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA**

MAT 2 of 2023
with
CAN 2 of 2023

**Subinay Saha Roy
Vs.
The State of West Bengal & Ors.**

Appearance:

For the Appellant	:	Mr. Jagriti Mishra, Advocate Ms. Ananya Bhattacharya, Advocate Mr. Subham Gupta, Advocate Mr. Raj Kumar Mitra, Advocate Ms. Mrinmayee Das, Advocate
For the State	:	Mr. Subir Kumar Saha, Ld. AGP Mr. Pretom Das, Advocate
For the Respondent Nos. 3 & 4	:	Mr. Biswaroop Bhattacharyya, Advocate Mr. Pratik Majumder, Advocate
Judgment On	:	23.02.2024

Harish Tandon, J.:

1. The scope of the instant appeal which was within the limited contour have been expanded by the eloquence of the Counsel for the appellant inviting the attention of the Bench to various provisions of the Acts, Rules and Ordinance in order to buttress the contention that the charge-sheet issued by the Vice-Chancellor is bad, illegal and without jurisdiction.
2. A prelude to the litigation can be seen from the fact that the University decided to initiate a disciplinary proceeding against the appellant alleging misconduct and the charge-sheet was issued by the Vice-chancellor, which is assailed by the appellant/petitioner before this Court. The Single Bench dismissed the contention of the petitioner that

the charge-sheet suffers from serious infirmities and/or illegalities but kept all the points, which was agitated by the appellants, open for the decision of the enquiry officer and further liberty was granted to the appellant to challenge the entire disciplinary proceeding at the appropriate stage including challenging the charge-sheet on the same grounds which have been urged in the instant writ petition.

3. According to the learned Advocate for the appellant, the charge-sheet notice issued by the Vice-Chancellor is infirm, bad and illegal in view of the provision contained under Uttar Banga Krishi Viswavidyalaya Act, 2000. In order to further the aforesaid submission, reliance is placed upon Clause (I) of Sub-Section (1) of Section 11 of the said Act which gives power to the executive Council to approve the recommendation for appointment of the officers, teachers and the non-teaching staff in the manner prescribed. Taking clue therefrom, it is sought to be contended that the moment the appointing authority is the Executive Council, the Vice-Chancellor is denuded of power to issue a show-cause notice or initiate a proceeding thereupon for the simple reason that he being not the Executive Council, cannot usurp the power in absence of any statutory provisions.
4. Mr. Mishra, the learned Advocate appearing for the appellant further relies upon the provision contained under Section 26 of the said Act which confers power upon the Vice-Chancellor to take any action in emergency, which in his opinion, called for immediate action but such action is required to be approved by such authority or the body which would further be evident from Sub-Section (7) of Section 26 thereof where the Vice-chancellor shall only give effect to the orders of the Executive Council regarding appointment, suspension and dismissal of the officers, teachers and other employees of the university.
5. According to Mr. Mirsha, the conjoint reading of the aforesaid sub-sections leaves no ambiguity that the Executive Council being the appointing authority is regarded as disciplinary authority and any action initiated in contemplation of the disciplinary proceeding can only originate from the Executive Council. Even if the Vice-Chancellor exercises such emergency power, all such actions are required to be ratified and approved by the Executive Council. In this regard, it is

submitted that since there is no approval or the ratification and/or vetting by the Executive Council, the entire action is *per se* illegal.

6. According to Mr. Mishra, the other provisions contained in Sections 35 and 40 also corroborates the stand that the Executive Council is an appointing authority and the terms and conditions of the service in relation to the teacher has to be prescribed by the said Council and, therefore, the Vice-Chancellor cannot usurp such power. By referring to Section 51 of the said Act, Mr. Mishra submits that the power to make first statute is vested upon the State Government and in exercise of such power, the first statute was enacted on April 30, 2001. Mr. Mishra refers to Section 2 (b) of the first statute defining the appointing authority as the Executive Council of the University and, thus, the Vice-Chancellor cannot act as an appointing authority.
7. As per Mr. Mishra even Section 80 makes the position more clear that all teachers on their first appointment under the University shall be provided with a letter of appointment by the Vice-Chancellor by putting his signature which leads to an inescapable conclusion that the Vice-Chancellor merely acts as a signing authority and the executive council as the appointing authority.
8. Mr. Mishra placed reliance upon the several provisions of the Bidhan Chandra Krishi Viswavidyalaya Act, 1974 in support of the aforesaid contention, more particularly, Section 39 thereof conferring a power to make the ordinance or the first statute and in pursuance thereof an ordinance was promulgated known as "Bidhan Chandra Krishi Viswavidyalaya (Discipline, Penalty and Appeal) Ordinance".
9. According to him, the definition of the appointing authority and the disciplinary authority means authority empowered to make appointment to the posts and authority competent to impose penalty. He relied upon the Schedule I appended thereto, wherein the appointing authority is shown as the Vice-Chancellor with the approval of the Executive Council and the authority empowered to impose the penalty is also shown as Vice-Chancellor. Mr. Mishra further submits that the said Ordinance though adopted vide Notification Dated 27.12.2004 but in case of initiation of a proceeding, there is no document forthcoming permitting the provisions of said Ordinance made applicable to the petitioner. In other words, it is sought to be contended that there is no

ratification and/or vetting and/or approval of the Executive Council and in such view of the matter any action contemplated under the said Ordinance is infirm, faulty and, therefore, is required to be nipped in the bud.

10. On the other hand, the State submits that in the 74th Meeting of the Executive Council the approval was given by the Executive Council and, therefore, it cannot be said that the Executive Council has not taken any action. It is further submitted that all the paraphernalia required under the said Ordinance have been followed and, therefore, there is no illegality and/or infirmity in the order of the Trial Court.
11. In reply, Mr. Mishra submits that the aforesaid 74th Meeting of the Executive Council was in relation to the revocation and suspension and, therefore, cannot be construed as an approval of vetting relation to an Ordinance.
12. On the conspectus of the aforesaid stands taken by the respective parties, the seminal point involved in the instant appeal is whether the charge-sheet issued, taking a clue from an Ordinance, is liable to be quashed in absence of the powers having conferred upon the Vice-Chancellor.
13. At the very outset, we must record that the scope of the judicial review in a case relating to a challenge being thrown to a charge-sheet, at the threshold, is very limited as the authorities contemplating a proceeding have not arrived at the final decision. The charge-sheet or the show-cause notice can be impinged, if the authority issuing the same inherently lacks power and/or jurisdiction or have not been conferred such powers or such powers is conferred upon other authority.
14. On a bare look on the articles of charges, it is not difficult to understand the meaning thereof on the ground of vagueness or issued under the wrong statute. So far as the vagueness point is concerned, we do not intend to delve much thereupon after looking at the articles of charges nor we find any infirmity at this stage, and, therefore, do not intend to make any comment thereupon for the simple reason that the Trial Court has kept all points open and if agitated at an appropriate stage shall be decided by the competent authority.
15. Admittedly, the Uttar Banga Krishi Viswavidyalaya Act, 2000 applies to the present University which appears to be a complete and exhaustive

Act in relation to its functioning and the other allied matters but there is a conscious omission of the provisions relating to a disciplinary action to be taken against the employee or the teachers of the said University. Section 10(1) of the said Act vividly reflects the constituent of the said Executive Council and the Vice-Chancellor is imbibed within the *ex-officio* members. The powers, functions and the duties of the Executive Council is extensively incorporated in Section 11 of the said Act and the Clause (l) of Sub-Section (1) of Section 11 gives clear indication relating to the power to approve the recommendation for appointment of the teacher, officers and non-teaching staff. The said provision if read conjointly with Section 35 of the said Act leaves no ambiguity that the teacher or the professor or the reader of the University shall be appointed by the Executive Council on the recommendation of the selection committee containing the terms and conditions of such appointment as may be prescribed by the said council.

16. Section 51 bestowed power to make a first statute in relation to the matters set forth in sub-Sections (1) to (10) of Section 50 and it would be evident from Sub-Section (3) of Section 50 that the manner of appointment and the terms and conditions of Service of the teachers of the University is engulfed therein. The first statute as indicated above was promulgated on April 30, 2001 which also indicates the Executive Council as the appointing authority.
17. To this regard, we do not find any ambiguity or a dissent. Even Section 80 of the said first statute provides that the teachers appointed for the first time in the University shall be provided with the letter of appointment under Section 40 of the Parent Act and to be signed by the Vice-Chancellor. We would not have ventured further on an assimilation of the aforesaid provisions and arriving at the conclusion that the Executive Council is the appointing authority and the Vice-Chancellor is a signatory to the letter of appointment issued to each teachers appointed to the said University but we cannot overlook the fact that there is no provision relating to a disciplinary action to be taken against the employees, officers and the teachers of the said university; even the first statute does not contain such provision.
18. The genesis of the Act of 2000 can be traced that the prior to its enactment Bidhan Chandra Krishi Viswavidyalaya Act, 1974 was in

vogue containing an exhaustive provisions relating to the establishment of the University and its functioning as well as the powers conferred upon the various authorities in this regard. Both the Acts contained the powers to make the first statute and also Ordinance which is fortified from Section 39A of the Act of 1974 and on the meaningful reading of the provisions contained under Sections 50 and 51 of the Act of 2000.

19. Since the Ordinance was promulgated under 1974 Act comprehensively, in relation to a discipline, penalty and appeal of the employees including the teachers, there was no separate Ordinance promulgated in exercise of powers under the Act of 2000. The University felt that in absence of any comprehensive legislation, the administration of the university was not in a proper shape nor any action could be taken against its officers, employees and the teachers. The aforesaid ordinance was adopted by vide Notification dated 27.12.2004.
20. A plea is sought to be taken that since the said notification is signed by the Vice-Chancellor and has not be ratified by the Executive Council, it cannot be applied nor any action can be taken thereunder. We notice from the said Notification that the Vice-Chancellor in exercise of the relevant powers conferred under Section 26 of the Act of 2000 adopted and enforced the said Ordinance with immediate effect. The reference is made to an another communication indicating that the said notification is issued in exercise of power under Section 26 and not 26 (6) and therefore, the question of approval of Executive Council does not arise, but we find from the documents produced before us in the instant appeal more particularly, the extract of the 74th Meeting of the Executive Council though relatable to the revocation or suspension indicating the action taken against the appellant under the aforesaid provisions of the Ordinance which would further be seen that one of the contentions raised in the said meeting relates to an approval of the executive council for taking action under the provisions of the Ordinance and ultimately the said resolution was approved. The Ordinance indicates the action to be taken by the Vice-Chancellor and as an authority empowered to impose penalty.
21. We, thus, do not find that the charge-sheet issued by the Vice-chancellor is liable to be impinged at this stage. Furthermore, there is no challenge thrown in the instant writ-petition on the adoption of the Ordinance

under the said Notification nor the competence of the vice-Chancellor in this regard nor the Ordinance being in conflict with the Act of 2000, we do not intend to go into the aforesaid aspect since we find that there is no infirmity in issuing the charge-sheet by the Vice-Chancellor at this stage.

22. We, therefore, decline to make any interference with the impugned order.
23. The appeal being **MAT 2 of 2023** is **dismissed**. All the connected applications filed therein are accordingly **dismissed**.
24. At this stage, learned Counsel for the appellant prays for stay of the operation of the impugned judgment.
25. We do not find any ground in this regard and therefore, such prayer is refused.
26. Urgent Photostat Certified Copy of this judgment, if applied for, be made available to the parties within three days from the date of application.

I agree.

(Harish Tandon, J.)

(Supratim Bhattacharya, J.)